IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.384 OF 2007
IN
ARBITRATION PETITION NO.254 OF 2006

WITH

APPEAL NO.385 OF 2007
IN
ARBITRATION PETITION NO.263 OF 2006

Asian Electronics Ltd. ...Appellant
V/s.
Tata Motors Ltd. ...Respondent

Mr.Milind Sathye, Sr. Advocate, with Mr.Jitendra Jain, Mr.Zuber Dada and Mr.Mukul Taly i/b. S. Mohomedbhai & Co. for the Appellant.

Mr.P.K. Samdhani, Sr. Advocate, with Mr.S. Purohit and Mr.Sandeep Bhimekar i/b. Wadia Gandhy & Co. for the Respondent.

CORAM : J.N. PATEL &
A.A. SAYED, JJ.

DATE : 10TH JULY, 2007.

P.C. :

1. Heard the learned Counsel for the parties.

2. These two Appeals are preferred impugning the decision of the learned Single Judge rejecting the application of the Appellant by refusing to interfere with the two awards in question.

3. It has been pointed out to this Court that in view of the fact that Arbitral Tribunal has not given

any reasons for its finding as to how the claim of the respondent is justifiable and without there being any evidence on record, the awards stand vitiated.

4. It is further submitted that the awards, if read particularly in the context of the operative part, and clause (B) thereof, the relief of restitution which has been granted is not just and proper for the very reason that the appellant will have to revert to appropriate proceedings if the case of the respondent before the Income Tax Authorities is decided either way which directly relates to the subject matter of the dispute and that in view of the fact that the claim of the respondent having not crystalized, the Arbitral Tribunal could not have passed an award in the matter.

5. The dispute pertains to the liability of the appellant to pay the claim which arose from the Income Tax Authorities rejecting the claim of the respondent for depreciation in respect of electrical energy saving devices which was taken on lease under an agreement from respondent.

6. There is no dispute about the fact that the respondent’s Appeal is pending before the Income Tax Authorities on the issue and that dispute arose on the Income Tax Authorities having rejected the claim of the respondent to claim depreciation. The material clause

on which the parties are relying read as follows :-

> "If the eligibility of the lessor to claim depreciation is decreased / increased or if the lessor is disallowed its claim for the same, whether wholly or partly, in any year, during the fixed period of the lease or the lessor is required to pay Income Tax at higher / lower rate than 43% then the rental will stand increased / decreased accordingly as a percentage of acquisition cost."

7. Both the parties have lodged their claims and counter claims before the Arbitral Tribunal for computation of actual post tax IRR where depreciation has been disallowed for Lease 297 and the only distinct issue which the respondent agitated was that considering depreciation as disallowed and as only interest is taxable, if tax on principal segment of lease rental is considered as an inflow and actual tax payment is considered as an outflow then appellant who will be entitled to receive the amount of tax saved on the principal after depreciation is disallowed, the respondent-claimant would be liable to pay tax only on interest and, therefore, the benefit of tax saved on the principal ought to have been awarded in their

favour which has been crystalized in their reply and the documents annexed thereto before the Arbitral Tribunal.

8. The Arbitral Tribunal accepted the claim of the respondent and rejected the case of the appellant on the basis that the claim of the appellant cannot be accepted for the very reason that while computing their claim, the respondent has taken into consideration and assessed their claim only on the basis of tax on interest.

9. The learned Single Judge has considered each and every aspect of the matter and came to a finding that within the limited jurisdiction exercised under Section 34 of the Arbitration and Conciliation Act, 1996, it cannot be said that the awards call for any interference.

10. It was argued before us that in view of the decision rendered by the Supreme Court in the case of Oil & Natural Gas Corporation Ltd. V/s. Saw Pipes Ltd. (2003) 5 SCC 705, the Court had every power to interfere with such an award which was against public policy which has been given a comprehensive definition in the case of Oil & Natural Gas Corporation Ltd. V/s. Saw Pipes Ltd. by the Supreme Court by observing that if the award suffers from the vice of absence of

reasons while coming to conclusion, then it can be held to be patently illegal.

11. It was specifically contended that the restitution clause in the award cannot be substituted by the Court in an application under Section 34 and therefore such an award has to be quashed and set aside on the ground of public policy and a mere statement made by the claimant that it would repay the amount in case he succeeds in his Appeal before the Income Tax Authorities with interest cannot be incorporated and read therewith.

12. What we find is that such an opportunity was available to the appellant before the learned Single Judge of having sought leave of the Court to approach the Arbitral Tribunal under Section 33 of the Arbitration Act, 1996 which he did not avail of and it has been stated with emphasis that it cannot be so done by invoking section 33.

13. We, therefore, find that the view taken by the learned Single Judge in the matter cannot be considered to be erroneous and does not call for any interference.

14. Before we part with the matter, we would also like to observe that nothing prevents the appellant

from reagitating the issue after the subject matter pending with the Income Tax Authorities is finally decided either way and at that time it will be open for the appellant to claim the benefits which may flow from the decision of the Income Tax Authorities in favour of the parties.

15. With the aforesaid observations, the Appeals stand dismissed. No order as to costs.

[A.A. SAYED, J.] **[J.N. PATEL, J.]**